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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RODNEY DAVIS,

Plaintiff,

v.

ROBINSON, *et al.*,

Defendants.

Case No. 3:15-cv-00607-MMD-VPC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE
VALERIE P. COOKE

Before the Court is the Report and Recommendation of United States Magistrate Judge Valerie P. Cooke (ECF No. 41) (“R&R”) relating to Defendants’ motion for summary judgment (ECF No. 35), plaintiff’s cross-motion for summary judgement and opposition to defendants’ motion for summary judgment (ECF No. 37) and defendants’ reply (ECF No. 40). The Magistrate Judge recommends denial of both parties’ motions. (ECF No. 41.) The parties had until November 21, 2017, to object to the R&R. To date, no objection has been filed.

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the court is required to “make a *de novo* determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

1 Indeed, the Ninth Circuit has recognized that a district court is not required to review a
2 magistrate judge's report and recommendation where no objections have been filed. See
3 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
4 of review employed by the district court when reviewing a report and recommendation to
5 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
6 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
7 view that district courts are not required to review "any issue that is not the subject of an
8 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then
9 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
10 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
11 which no objection was filed).


12 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to
13 determine whether to adopt Magistrate Judge Cooke's R&R. The Magistrate Judge
14 recommended that the parties' motions on the single claim for Eighth Amendment
15 excessive force be denied because a genuine issue of material fact exists as to whether
16 the force used was excessive. Upon reviewing the R&R and the parties' briefs, this Court
17 agrees with the Magistrate Judge and will therefore adopt the Magistrate Judge's R&R in
18 full.

19 It is therefore ordered, adjudged and decreed that the Report and
20 Recommendation of Magistrate Judge Valerie P. Cooke (ECF No. 41) is accepted and
21 adopted in its entirety.

22 It is ordered that defendants' motion for summary judgement (ECF No. 35) is
23 denied.

24 It is further ordered that plaintiff's cross-motion for summary judgment (ECF No.
25 37) is denied.

26 DATED THIS 15th day of December 2017.

27 
28 _____
MIRANDA M. DU
UNITED STATES DISTRICT JUDGE